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Attorneys for Plaintiff
GEN-PROBE INCORPORATED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GEN-PROBE INCORPORATED,

Plaintiff,

v.

VYSIS, INC.,

Defendant.

No. 99CV2668 H (AJB)

**NOTICE OF MOTION AND MOTION OF GEN-
PROBE INCORPORATED FOR PARTIAL
SUMMARY JUDGMENT**

Date: May 29, 2001
Time: 10:30 a.m.
Dept.: Courtroom 1

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that on March 29, 2001 at 10:30 a.m. in Courtroom 1 of the above entitled court located at the United States Courthouse, 940 Front Street, San Diego, California 92101, plaintiff Gen-Probe Incorporated ("Gen-Probe") will and hereby does move the Court under Federal Rule of Civil Procedure, Rule 56 for partial summary judgment under Counts One

1 and Three of its Second Amended Complaint that its nucleic acid test for human
2 immunodeficiency virus ("HIV") and hepatitis C virus ("HCV") does not literally infringe the
3 claims of U.S. Patent No. 5,750,338 (the "'338 patent"). The grounds of this motion are that there
4 is no disputed issue of material fact that Gen-Probe's HIV and HCV test kit does not contain each
5 of the claim limitations of the '338 patent and thus does not infringe that patent. In particular, the
6 methods and kits claimed in the '338 patent are limited to using only non-specific amplification
7 methods. Gen-Probe's HIV and HCV test kit, on the other hand, uses a method of specific
8 amplification.

9 This Motion is based on this Notice of Motion and Motion, the accompanying
10 Memorandum of Points and Authorities, the Declaration of R. William Bowen, the Declaration of
11 Dr. Joseph O. Falkinham III, Ph.D., the Declaration of Dr. Matthew Longiaru, the Notice of
12 Lodgment of Exhibits, and on such other and further oral and documentary evidence as the Court
13 may consider at the time of the hearing.

14 Dated: April 30, 2001

15 STEPHEN P. SWINTON
16 J. CHRISTOPHER JACZKO
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21 GEN-PROBE INCORPORATED

22 By: 
23 Stephen P. Swinton

24 Attorneys for Plaintiff
25 GEN-PROBE INCORPORATED